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Attorneys for Defendant
MONSANTO COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

)
) MDL No. 2741
)
) Case No. 3:16-md-02741-VC
)

Hardeman v. Monsanto Co., et al.,
3:16-cv-0525-VC
Stevick v. Monsanto Co., et al.,
3:16-cv-2341-VC
Gebeyehou v. Monsanto Co., et al.,
3:16-cv-5813-VC

) **MONSANTO COMPANY'S MOTION**
) **TO EXCEED PAGE LIMIT FOR**
) **SPECIFIC-CAUSATION SUMMARY**
) **JUDGMENT AND DAUBERT MOTION**
)

1 Defendant Monsanto Company (“Monsanto”) hereby respectfully moves for leave to
2 exceed the page limits for its specific causation *Daubert* and summary judgment briefs to 45
3 pages for Monsanto’s opening brief and 15 pages for its reply brief. Plaintiffs oppose this
4 limited page extension, and have also made clear that they oppose other aspects of Monsanto’s
5 briefing strategy. Monsanto stated its position on this issue in the parties’ December 28, 2018
6 Joint Case Management Statement (ECF No. 2386, or “CMC Statement”) but now moves
7 separately given the importance of the issue and to update the Court on further correspondence
8 with Plaintiffs since the CMC statement was filed.

9 In support of this request, Monsanto states as follows:

10 1. In the parties’ October 22, 2018 Joint Case Management Statement (ECF No. 2046),
11 Plaintiffs requested that the Court set page limits for the specific causation *Daubert* and
12 summary judgment briefs in advance of “the Group 1 trial.” In a section of the statement titled
13 “Specific Causation *Daubert* Briefing and Summary Judgment Page Limits,” Plaintiffs proposed
14 the following page limits:

- 15 • Monsanto’s specific causation *Daubert* and summary judgment brief: 35 pages
- 16 • Plaintiffs’ opposition and affirmative specific causation *Daubert* and summary
17 judgment brief: 40 pages
- 18 • Monsanto’s opposition and reply brief: 10 pages
- 19 • Plaintiffs’ reply brief: 5 pages

20 Monsanto did not object at time to the page limitations proposed by Plaintiffs, in part because it
21 was unclear whether the briefing would address only the first case the Court elected to set for
22 trial or all of the Group 1 cases.

23 2. In the ten weeks that have elapsed since that filing, however, the scope of the briefing
24 has become clearer. The Court made clear in its November 20, 2018 PTO No. 56 (ECF No.
25 2194) that the parties were to continue preparing all three Group 1 cases for trial and ordered
26 that all three cases be ready for trial by February 25, 2019. Further, it became clear at the
27 December 5, 2018 Case Management Conference that the upcoming *Daubert* hearing would
28

1 address all three of the Group 1 cases. Accordingly, Monsanto requests 10 additional pages for
2 its opening brief and 5 additional pages for the reply brief on specific causation to account for
3 all three cases, rather than just the *Hardeman* case. Monsanto does not oppose reciprocal page
4 extensions for Plaintiffs' specific causation *Daubert* and summary judgment briefs.

5 3. Monsanto met and conferred with Plaintiffs several times in relation to this request.
6 Plaintiffs made clear that they not only oppose the page extension, but understand the scope of
7 the prior agreement to encompass *all* of Monsanto's *Daubert* and summary judgment arguments,
8 even on matters completely unrelated to specific causation.

9 4. For several weeks now, Monsanto has anticipated filing *Daubert* briefs as to Dr.
10 Sawyer (Plaintiffs' exposure expert), Dr. Benbrook (Plaintiffs' regulatory expert), and Mr. Mills
11 (Plaintiffs' punitive damages experts). Those motions are based in substantial part on the
12 experts' recent depositions and could not have been filed before now. In addition, Monsanto
13 has anticipated filing a summary judgment brief on other legal grounds unrelated to specific
14 causation. These briefs and arguments could materially advance the termination of this litigation
15 and streamline the issues before the Court if these cases proceed to trial. As Monsanto has made
16 clear to Plaintiffs, it intends to abide by the Court's existing page limits on these briefs (15 pages
17 for *Daubert* and 25 pages for all non-causation summary judgment arguments).

18 5. To address Plaintiffs' recently raised claims of prejudice based on these additional
19 briefs, Monsanto offered to agree to an extension of time (without altering the time for
20 completion of all briefing) for Plaintiffs' oppositions to Monsanto's motions unrelated to
21 specific causation in exchange for Plaintiffs' agreement not to oppose Monsanto's briefing plan.
22 At the time the CMC Statement was filed, Plaintiffs indicated that they would be willing to
23 consider Monsanto's proposal. This afternoon, Plaintiffs stated that they will not consent and
24 oppose any briefing being filed over 35 pages.

25 6. In light of the foregoing, Monsanto requests that the Court grant its motion to extend
26 the page limits for its specific causation *Daubert* and summary judgment opening brief and reply
27 brief. In addition, unless directed otherwise by the Court, Monsanto intends to file the other
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1 *Daubert* and summary judgment briefs it has long contemplated filing. Monsanto remains
2 willing to agree to page and time extensions for Plaintiffs, if the Court deems them appropriate.
3

4 DATED: December 31, 2018

5 Respectfully submitted,

6 /s/ Brian L. Stekloff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December 2018, a copy of the foregoing was filed with the Clerk of the Court through the CM/ECF system which sent notice of the filing to all appearing parties of record.

/s/ Brian L. Stekloff

